

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MARY LOU ROSEMEYER, )  
Plaintiff, )  
vs. ) Civil Action No. 08-216  
ERIC HOBBS TRUCKING, INC, )  
Defendant, )  
vs. )  
GENE J. PUSKAR, )  
Third-Party Defendant. )

AMBROSE, Chief District Judge

## **MEMORANDUM ORDER OF COURT**

This action was commenced by Complaint filed on February 15, 2008. The within matter arises from a motor vehicle accident that occurred on or about February 28, 2006. A Third-Party Complaint was filed by Eric Hobbs Trucking, Inc. against Gene J. Puskar. The Third-Party Complaint filed on behalf of Eric Hobbs Trucking, Inc. only seeks contribution and indemnity from the Third-Party Defendant, Gene J. Puskar. An Answer and Defenses was filed on behalf of the Third-Party Defendant, Gene J. Puskar on May 13, 2008.

Third-Party Defendant filed a Motion for Leave to Amend his Answer and Defenses to the Third-Party Complaint. Amendments to pleadings are governed by Rule 15(a) of the Federal Rules of Civil Procedure, which provides that after a responsive pleading has been filed, a party may amend its pleading “only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). Grounds that may justify a denial of leave to amend include “undue delay, bad faith, dilatory motive, prejudice, and futility.”

*In re Burlington Coat Factory Secs. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997) (citations omitted).

“In assessing ‘futility,’ the district court applies the same standard as applies under Rule 12(b)(6).”

*Id.*

Third-Party Defendant seeks to amend to assert the expiration of the statute of limitations. (Docket No. 10). In opposition, Third-Party Plaintiff asserts that the statute of limitations for its contribution and indemnity claims has not expired. (Docket No. 20). I agree with Third-Party Plaintiff. “The statute of limitations will not bar the joinder of a third-party defendant for contribution and indemnity, since such a claim does not accrue until judgment is entered against the defendant on the original claim.” *Robichaw v. Horizon House, Inc.*, 2008 WL 2152249, 2 (E.D.Pa., May 22, 2008), *citing, Donegal Mutual Ins. Co. v. Grossman*, 195 F.Supp.2d 657, 664-665 (M.D.Pa.2001); *Resolution Trust Corp. v. Farmer*, 836 F.Supp. 1123, 1132 (E.D.Pa.1993); *Santiago v. Johnson Machine and Press Corp.*, Civ. A. No. 85-5701, 1986 WL 14201 (E.D.Pa.1986), *citing Hornsby v. Johns-Manville Corp.*, 96 F.R.D. 367 (E.D.Pa.1982); and *Campbell v. Meadow Gold Products Co.*, 52 F.R.D. 165 (E.D.Pa.1971). Thus, based on the same, I find that amendment to assert the expiration of the statute of limitations would be futile as such defense is not viable in the context of this case.

THEREFORE, this 18<sup>th</sup> day of June, 2008, after careful consideration of the submissions of the parties, it is hereby ordered that Third-Party Defendant’s Motion for Leave to Amend Answer and Defenses to Third-Party Complaint (Docket No. 10) is denied.

BY THE COURT:

/s/ Donetta W. Ambrose  
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Donetta W. Ambrose  
Chief U.S. District Judge